BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

ROBERT SHARP Claimant	}
VS.	Docket No. 103 077
TONY'S PIZZA SERVICE) Docket No. 193,077
Respondent AND	
LIBERTY MUTUAL INSURANCE COMPANY Insurance Carrier	}

ORDER

Claimant appeals from the November 1, 1994, Preliminary Order by Administrative Law Judge George R. Robertson which denied claimant's request for medical treatment.

ISSUES

The Administrative Law Judge found that claimant did not establish that he suffered an accidental injury arising out of and in the course of his employment. Claimant asks the Appeals Board to review that finding. Respondent urges the Appeals Board to affirm the Administrative Law Judge and also argues that the evidence establishes that claimant did not give notice within ten (10) days as required by K.S.A. 44-520. Because the Administrative Law Judge made no ruling on the notice issue, the Appeals Board will review only the finding that claimant did not suffer a personal injury arising out of and in the course of his employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

- (1) On appeal from a preliminary order, the Appeals Board has jurisdiction to review a finding that the claimant has not proven he/she suffered an accidental injury arising out of and in the course of employment. K.S.A. 44-534a.
- (2) After reviewing the record and considering the arguments of the parties, the Appeals Board finds that claimant has not established by a preponderance of credible evidence that he suffered an accidental injury arising out of and in the course of his employment.

Claimant testified that he injured his back on June 11, 1994, while doing clean-up work which involved bending over and climbing on machinery. Claimant initially testified that he reported the injury to several of respondent's employees, including Rick Ardis. On cross-examination, however, he changed his testimony to indicate that he had reported a

previous injury to these employees. He continued to claim, however, he reported the current injury to Mr. Ardis. Mr. Ardis testified that claimant did not report the injury to him. In fact, he testified that claimant came to work that day complaining of back pain but indicated it was not related to his work. The evidence establishes that claimant was familiar with respondent's requirements for written reports on work-related accidents. Claimant did not complete a written report. The evidence also establishes claimant has a history of degenerative disc disease which had, on a number of occasions, required a leave of absence from his work for the respondent without a work-related accident. Finally, the evidence does not include a medical opinion which confirms a work-related injury on June 11, 1994. For these several reasons, the Appeals Board finds the claimant has not met his burden. The November 1, 1994, Order denying benefits should be affirmed.

WHEREFORE, the Appeals Board finds the November 1, 1994, decision of Administrative Law Judge George R. Robertson, should be, and is hereby, affirmed.

II IS SO ORDERED.		
Dated this day of	February, 1995.	
	BOARD MEMBER	
	BOARD MEMBER	
	BOARD MEMBER	

cc: Tamara J. Pistotnik, Wichita, KS Mickey Mosier, Salina, KS George R. Robertson, Administrative Law Judge George Gomez, Director